

STATE OF MICHIGAN  
COURT OF APPEALS

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GERLACH'S BOWLING CENTER, INC.,

Plaintiff-Appellant,

v

HEDLEY A. HARRIS, a/k/a HEADLEY A. HARRIS  
and WILHELMINA HARRIS,

Defendants-Appellees.

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UNPUBLISHED  
November 6, 1998

No. 203850  
Lapeer Circuit Court  
LC No. 95-022100 NZ

Before: Markman, P.J., and Bandstra and J.F. Kowalski\*, JJ.

MEMORANDUM.

Plaintiff appeals by right the circuit court order granting defendants' motion for summary disposition in this quiet title action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Adjacent parcels of land owned by the parties were originally part of the same tract owned by one person. The boundary between the properties was a dedicated, but undeveloped, street located entirely on plaintiff's property. Plaintiff's property was developed in 1945, and a driveway was constructed on a portion of the dedicated street. Defendants purchased their property in 1994, and plaintiff brought this quiet title action seeking to preclude their use of the driveway. The trial court granted defendants' motion for summary disposition, relying on *Smith v Lock*, 18 Mich 56 (1869).

The Court in *Smith* held that the purchase of a lot, described as bounded on a street, estops the grantor from shutting off the street so as to prevent his grantee from making use of the street for his own accommodation. This is a matter of private right, and does not depend upon the public acquiring a right to way. *Id.* at 59. Similarly, in *Kirchen v Rimenga*, 291 Mich 94; 288 NW2d 344 (1939), the Court found that regardless of whether the public had acquired rights to land plotted for street and park purposes, the grantors could not take away from their grantees rights designated in the plat.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Contrary to plaintiff's arguments, these cases are not distinguishable from the instant case. Plaintiff has failed to establish a genuine issue of material fact that would preclude the trial court from granting summary disposition as a matter of law.

We affirm.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski